

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

|                                  |   |                             |
|----------------------------------|---|-----------------------------|
| <b>UNITED STATES OF AMERICA,</b> | ) | <b>CASE NO. 8:06CR84</b>    |
|                                  | ) |                             |
| <b>Plaintiff,</b>                | ) |                             |
|                                  | ) |                             |
| <b>vs.</b>                       | ) | <b>MEMORANDUM AND ORDER</b> |
|                                  | ) |                             |
| <b>ENRIQUE SERRANO GUZMAN,</b>   | ) |                             |
|                                  | ) |                             |
| <b>Defendant.</b>                | ) |                             |

This matter is before the Court on the Defendant's notice of appeal (Filing No. 34) and the Clerk's memoranda regarding an untimely appeal (Filing No. 35) and potential in forma pauperis status (Filing No. 36).

The Defendant was sentenced on September 18, 2006. (Filing No. 24.) On November 21, 2008, the Court denied the Defendant's motion for release of funds. (Filing No. 33.) On February 12, 2009, the Defendant filed a pro se notice of appeal from the order. (Filing No. 34.)

The Defendant's notice of appeal was due on or before December 11, 2008. Fed. R. App. P. 4(b)(1)(A)(i) & 26(a)(2). In his notice of appeal filed almost two months later, the Defendant did not ask for leave to file the notice out of time or acknowledge that the notice was tardy. Federal Rule of Appellate Procedure 4(b)(4) states that "[u]pon a finding of excusable neglect or good cause," the court may, before or after the expiration of the time in question, and with or without a motion or notice, extend the time for filing a notice of appeal. In this case, the Court finds that, based on the record, neither excusable neglect nor good cause was a factor in the late filing of the notice of appeal.

IT IS ORDERED:

1. Based on the record, the Court finds that neither excusable neglect nor good cause was a factor in the late filing of the notice of appeal;
2. The Defendant is not allowed to proceed on appeal in forma pauperis; and
3. The Clerk is directed to send a copy of this memorandum and order to the Eighth Circuit Court of Appeals.

DATED this 13<sup>th</sup> day of February, 2009.

BY THE COURT:

S/Laurie Smith Camp  
United States District Judge